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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,672	08/23/2000	Stewart Kevin Hester	5036	8001
2292	7590	10/19/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			PAYNE, DAVID C	
			ART UNIT	PAPER NUMBER
			2633	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/648,672

Applicant(s)

HESTER ET AL.

Examiner

David C. Payne

Art Unit

2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14, 19, 21 and 24-28 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 16 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 15, 17, 20, 22, 23, 35 and 36 have been considered but are moot in view of the new ground(s) of rejection.

2. Regarding applicant's arguments.

Merli is show to teach the limitations as discussed, see below. Merli is not used to teach all the limitations of the claim but as applicant has pointed out is combined with Kight and Fee.

3. Kight is understood to compare data from local and remote since it uses the overhead information, which transmits fault information. This fault information must be compared against some preferred values in order to determine that a fault exists, i.e., the local station must be able to interpret the overhead information in terms of acceptable values held at the local station.

4. In deference to the applicant this application has not been made final, given the applicant's concern regarding the adequate response to his remarks.

Claim Rejections - 35 USC § 103

Art Unit: 2633

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15, 17, 19, 20, 22, 23, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Merli et al. US 6,088,141 (Merli)* in view of *Kight et al. US 5,623,357 (Kight)* and *Fee et al. US 5,914,794 (Fee)*.

Re claim(s) 15, 20, 35 and 36

Merli does not disclose at least one transceiver for communicating optical network status information via an inter-node optical communications channel with a neighboring node.

Merli does not disclose a separate monitor of upstream and local faults.

Kight disclosed a unit central processor (82 of Figure 2) for detecting local faults (e.g., col/line: 7/65,66; 8/1-10) and an overhead processor (46 of Figure 2) for sensing faults from an upstream node (e.g., col/line: 8/61-67). It would have been obvious to one of ordinary skill in the art at the time of invention to use the Kight processors to sense both local and upstream faults in order to self-diagnose and monitor faults at other points in the network for rerouting traffic.

Fee disclosed an element manager that communicates with the entire network (e.g., figure 1, e.g., col./line(s): 4/42-56). It would have been obvious to one of ordinary skill in the art to

Art Unit: 2633

communicate status as Fee does so that communication is provided with a robust and highly fault tolerant fault orthogonal system (*e.g., col./line(s): 4/52-55*).

Re claim(s) 22 and 23, Merli disclosed a

and initiating a line switch to redirect traffic to an alternate optical path (*figure 2 #208*) to restore data traffic if there is a loss in signal from the neighboring node and status reports are not being receiving from the neighboring node.

Re claim(s) 17

Merli does not disclose wherein the second set of optical characteristics include a channel map of active channels in the network. Fee does disclose maintaining a the nature and location of faults in the system (*e.g., col./line(s): 4/52-55*). It would have been obvious to one of ordinary skill in the art at the time of invention to maintain a map as does Fee for the quick and efficient rerouting of traffic.

Allowable Subject Matter

7. Claims 1-14, 19, 21, and 24-28 are allowed.

Art Unit: 2633

8. Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (703) 306-0004. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (703) 305-4729. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Dcp



David C. Payne
Patent Examiner
AU 2633